

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

AT BECKLEY

MATTHEW CUMMINGS,

Petitioner,

v.

CIVIL ACTION NO. 5:23-cv-00560

WARDEN HOLZAPFEL,

Respondent.

ORDER

Pending is Petitioner Matthew Cummings' Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 [Doc. 1], filed August 21, 2023, Respondent's Motion to Dismiss [Doc. 9], filed September 18, 2023, and Respondent's Supplemental Motion to Dismiss [Doc. 11], filed September 19, 2023. This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Tinsley filed his PF&R on July 12, 2024. Magistrate Judge Tinsley recommended that the Court grant Respondent's Motion to Dismiss and Supplemental Motion to Dismiss, dismiss Petitioner's Petition for Writ of Habeas Corpus, and dismiss this action.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*" (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's

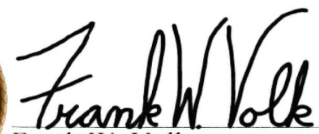
right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on July 29, 2024. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 16**], **GRANTS** Respondent’s Motion to Dismiss [**Doc. 9**] and Respondent’s Supplemental Motion to Dismiss [**Doc. 11**], **DISMISSES** the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 [**Doc. 1**], and **DISMISSES** the matter.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: August 6, 2024




Frank W. Volk
United States District Judge